



DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Requests Submitted for Public Comment

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Employee Benefits Security Administration (EBSA) is soliciting comments on the proposed extension of the information collection requests (ICRs) contained in the documents described below. A copy of the ICRs may be obtained by contacting the office listed in the ADDRESSES section of this notice. ICRs also are available at [reginfo.gov](http://www.reginfo.gov) (<http://www.reginfo.gov/public/do/PRAMain>).

DATES: Written comments must be submitted to the office shown in the Addresses section on or before [INSERT DATE THAT IS 60 DAYS FOLLOWING THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: G. Christopher Cosby, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Washington, DC 20210, (202) 693-8410, FAX (202) 693-4745 (these are not toll-free numbers).

I. SUPPLEMENTARY INFORMATION:

This notice requests public comment on the Department's request for extension of the Office of Management and Budget's (OMB) approval of ICRs contained in the rules and prohibited transactions described below. The Department is not proposing any changes to the existing ICRs at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICRs and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor

Title: Affordable Care Act Advance Notice of Rescission

Type of Review: Extension of a currently approved collection of information

OMB Number: 1210-0141

Affected Public: Businesses or other for-profits; Not-for-profit institutions

Respondents: 100

Responses: 1,600

Estimated Total Burden Hours: 26

Estimated Total Burden Cost (Operating and Maintenance): \$400

Description: Section 2712 of the PHS Act, as added by the Affordable Care Act, and the Department's interim final regulation (26 CFR 54.9815-2712, 29 CFR 2590.715-2712, 45 CFR 147.2712) provides rules regarding rescissions of health coverage for group health plans and health insurance issuers offering group or individual health insurance coverage. Under the statute and the interim final regulations, a group health plan, or a health insurance issuer offering group or individual health insurance coverage, generally must not rescind coverage except in the case of fraud or an intentional misrepresentation of a material fact. This standard applies to all rescissions, whether in the group or individual insurance market, or self-insured coverage. The rules also apply regardless of any contestability period of the plan or issuer.

PHS Act section 2712 adds a new advance notice requirement when coverage is rescinded where still permissible. Specifically, the second sentence in section 2712 provides that coverage may not be cancelled unless prior notice is provided, and then only as permitted under PHS Act sections 2702(c) and 2742(b). Under the interim final regulations, even if prior notice is provided, rescission is only permitted in cases of fraud or an intentional misrepresentation of a material fact as permitted under the cited provisions.

The interim final regulations provide that a group health plan, or a health insurance issuer offering group health insurance coverage, must provide at least 30 days advance notice to an individual before coverage may be rescinded. The notice must be provided regardless of whether the rescission is of group or individual coverage; or whether, in the case of group coverage, the coverage is insured or self-insured, or the rescission applies to an entire group or only to an individual within the group. The ICR

was approved by the Office of Management and Budget (OMB) under OMB Control Number 1210-0141 and is scheduled to expire on February 28, 2014.

Agency: Employee Benefits Security Administration, Department of Labor

Title: Affordable Care Act Patient Protection Notice

Type of Review: Extension of a currently approved information collection

OMB Number: 1210-0142

Affected Public: Businesses or other for-profits; Not-for-profit institutions.

Respondents: 261,680

Responses: 6,186,404

Estimated Total Burden Hours: 33,000

Estimated Total Burden Cost (Operating and Maintenance): \$48,000

Description: Section 2719A of the PHS Act, as added by the Affordable Care Act, and the Department's interim final regulation (29 CFR 2590.715-2719A), states that if a group health plan, or a health insurance issuer offering group or individual health insurance coverage, requires or provides for designation by a participant, beneficiary, or enrollee of a participating primary care provider, then the plan or issuer must permit each participant, beneficiary, or enrollee to designate any participating primary care provider who is available to accept the participant, beneficiary, or enrollee.

When applicable, it is important that individuals enrolled in a plan or health insurance coverage know of their rights to (1) choose a primary care provider or a pediatrician when a plan or issuer requires participants or subscribers to designate a primary care physician; or (2) obtain obstetrical or gynecological care without prior

authorization. Accordingly, paragraph (a)(4) of the interim final regulations requires such plans and issuers to provide a notice to participants (in the individual market, primary subscribers) of these rights when applicable. Model language is provided in the interim final regulations. The notice must be provided whenever the plan or issuer provides a participant with a summary plan description or other similar description of benefits under the plan or health insurance coverage, or in the individual market, provides a primary subscriber with a policy, certificate, or contract of health insurance. The ICR was approved by OMB under OMB Control Number 1210-0142 and is scheduled to expire on February 28, 2014.

Agency: Employee Benefits Security Administration, Department of Labor

Title: Suspension of Pension Benefits Regulation Pursuant to 29 CFR 2530.203-3

Type of Review: Extension of a currently approved collection of information

OMB Number: 1210-0048

Affected Public: Businesses or other for-profits

Respondents: 44,222

Responses: 173,560

Estimated Total Burden Hours: 147,129

Estimated Total Burden Cost (Operating and Maintenance): \$58,108

Description: Section 203(a)(3)(B) of ERISA governs the circumstances under which pension plans may suspend pension benefit payments to retirees that return to work or to participants that continue to work beyond normal retirement age. Furthermore, section 203(a)(3)(B) of ERISA authorizes the Secretary to prescribe regulations necessary to carry out the provisions of this section.

In this regard, the Department issued a regulation which describes the circumstances and conditions under which plans may suspend the pension benefits of retirees that return to work, or of participants that continue to work beyond normal retirement age (29 CFR 2530.203-3). In order for a plan to suspend benefits pursuant to the regulation, it must notify affected retirees or participants (by first class mail or personal delivery) during the first calendar month or payroll period in which the plan withholds payment, that benefits are suspended. This notice must include the specific reasons for such suspension, a general description of the plan provisions authorizing the suspension, a copy of the relevant plan provisions, and a statement indicating where the applicable regulations may be found (i.e., 29 CFR 2530.203-3). In addition, the suspension notification must inform the retiree or participant of the plan's procedure for affording a review of the suspension of benefits. The ICR was approved by OMB under OMB Control Number 1210-0048 and is scheduled to expire on June 30, 2014.

Agency: Employee Benefits Security Administration, Department of Labor

Title: Prohibited Transaction Exemption (PTE) 81-8 for Investment of Plan Assets in Certain Types of Short-Term Investments

Type of Review: Extension of a currently approved collection of information

OMB Number: 1210-0061

Affected Public: Businesses or other for-profits

Respondents: 61,000

Responses: 305,000

Estimated Total Burden Hours: 76,000

Estimated Total Burden Cost (Operating and Maintenance): \$87,000

Description: PTE 81-8 permits the investment of plan assets that involve the purchase or other acquisition, holding, sale, exchange or redemption by or on behalf of an employee benefit plan in certain types of short-term investments. These include investments in banker's acceptances, commercial paper, repurchase agreements, certificates of deposit, and bank securities. Absent the exemption, certain aspects of these transactions might be prohibited by section 406 and 407(a) of the Employee Retirement Income Security Act (ERISA).

In order to ensure that the exemption is not abused, that the rights of participants and beneficiaries are protected, and that the conditions of the exemption have been satisfied, the Department has included in the exemption two basic disclosure requirements. Both affect only the portion of the exemption dealing with repurchase agreements. The first requirement calls for the repurchase agreements between the seller and the plan to be in writing. The second requirement obliges the seller of such repurchase agreements to agree to provide financial statements to the plan at the time of the sale and as future statements are issued. The seller must also represent, either in the repurchase agreement or prior to the negotiation of each repurchase agreement transaction, that there has been no material adverse change in the seller's financial condition since the date that the most recent financial statement was furnished which has not been disclosed to the plan fiduciary with whom the written agreement is made. Without the recording and disclosure requirements included in this ICR, participants and beneficiaries of a plan would not be protected in their investments, the Department would be unable to monitor a plan's activities for compliance, and plans would be at a

disadvantage in assessing the value of certain short-term investment activities. The ICR was approved by OMB under OMB Control Number 1210-0061 and is scheduled to expire on June 30, 2014.

Agency: Employee Benefits Security Administration, Department of Labor

Title: PTE 96-62 – Process for Expedited Approval of an Exemption for Prohibited Transactions

Type of Review: Extension of a currently approved collection of information

OMB Number: 1210-0098

Affected Public: Businesses or other for-profits

Respondents: 33

Responses: 15,279

Estimated Total Burden Hours: 295

Estimated Total Burden Cost (Operating and Maintenance): \$51,000

Description: Section 408(a) of ERISA provides that the Secretary of Labor may grant exemptions from the prohibited transaction provisions of sections 406 and 407(a) of ERISA, and directs the Secretary to establish an exemption procedure with respect to such provisions. On July 31, 1996, the Department published PTE 96-62, which, pursuant to the exemption procedure set forth in 29 CFR 2570, subpart B, permits a plan to seek approval on an accelerated basis of otherwise prohibited transactions. A PTE will only be granted on the conditions that the plan demonstrate to the Department that the transaction is substantially similar to those described in at least two prior individual exemptions granted by the Department and that it presents little, if any, opportunity for

abuse or risk of loss to a plan's participants and beneficiaries. This ICR is intended to provide the Department with sufficient information to support a finding that the exemption meets the statutory standards of section 408(a) of ERISA, and to provide affected parties with the opportunity to comment on the proposed transaction, while at the same time reducing the regulatory burden associated with processing individual exemptions for transactions prohibited under ERISA. The ICR was approved by OMB under OMB Control Number 1210-0098 and is scheduled to expire on June 30, 2014.

Agency: Employee Benefits Security Administration, Department of Labor

Title: PTE 98-54 – Relating to Certain Employee Benefit Plan Foreign Exchange Transactions Executed Pursuant to Standing Instructions

Type of Review: Extension of a currently approved collection of information

OMB Number: 1210-0111

Affected Public: Businesses or other for-profits

Respondents: 35

Responses: 420,000

Estimated Total Burden Hours: 4,200

Estimated Total Burden Cost (Operating and Maintenance): \$0

Description: PTE 98-54 permits certain foreign exchange transactions between employee benefit plans and certain banks, broker-dealers, and domestic affiliates thereof, that are parties in interest with respect to such plans, pursuant to standing instructions. In the absence of an exemption, foreign exchange transactions pursuant to standing instructions would be prohibited under circumstances where the bank or broker-dealer is

a party in interest or disqualified person with respect to the plan under ERISA or the Internal Revenue Code.

The class exemption has five basic information collection requirements. The first requires the bank or broker-dealer to maintain written policies and procedures for handling foreign exchange transactions for plans for which it is a party in interest, which policies and procedures ensure that the party acting for the bank or broker-dealer knows it is dealing with a plan. The second requires the transactions to be performed in accordance with a written authorization executed in advance by an independent fiduciary of the plan. The third requires that the bank or broker-dealer provides the authorizing fiduciary with a copy of its written policies and procedures for foreign exchange transactions involving income item conversions and de minimis purchase and sale transactions prior to the execution of a transaction. The fourth requires the bank or broker-dealer to furnish the authorizing fiduciary a written confirmation statement with respect to each covered transaction within five days after execution. The fifth requires the bank or broker-dealer to maintain records necessary for plan fiduciaries, participants, the Department, and the Internal Revenue Service, to determine whether the conditions of the exemption are being met for a period of six years from the date of execution of a transaction.

By requiring that records pertaining to the exempted transaction be maintained for six years, this ICR ensures that the exemption is not abused, the rights of the participants and beneficiaries are protected, and that compliance with the exemption's conditions can be confirmed. The exemption affects participants and beneficiaries of the plans that are involved in such transactions, as well as, certain banks, broker-dealers, and domestic

affiliates thereof. The ICR was approved by OMB under OMB Control Number 1210-0111 and is scheduled to expire on June 30, 2014.

Agency: Employee Benefits Security Administration, Department of Labor

Title: Delinquent Filer Voluntary Compliance Program

Type of Review: Extension of a currently approved collection of information

OMB Number: 1210-0089

Affected Public: Businesses or other for-profits

Respondents: 12,322

Responses: 12,322

Estimated Total Burden Hours: 616

Estimated Total Burden Cost (Operating and Maintenance): \$676,712

Description: The Secretary of Labor has the authority, under section 502(c)(2) of ERISA, to assess civil penalties of up to \$1,000 a day against plan administrators who fail or refuse to file complete and timely annual reports (Form 5500 Series Annual Return/Reports) as required under section 101(b)(4) of ERISA-related regulations. Pursuant to 29 CFR 2560.502c-2 and 2570.60 et seq., EBSA has maintained a program for the assessment of civil penalties for noncompliance with the annual reporting requirements. Under this program, plan administrators filing annual reports after the date on which the report was required to be filed may be assessed \$50 per day for each day an annual report is filed after the date on which the annual report(s) was required to be filed, without regard to any extensions for filing.

Plan administrators who fail to file an annual report may be assessed a penalty of \$300 per day, up to \$30,000 per year, until a complete annual report is filed. Penalties are applicable to each annual report required to be filed under Title I of ERISA. The Department may, in its discretion, waive all or part of a civil penalty assessed under section 502(c)(2) upon a showing by the administrator that there was reasonable cause for the failure to file a complete and timely annual report.

The Department has determined that the possible assessment of these civil penalties may deter certain delinquent filers from voluntarily complying with the annual reporting requirements under Title I of ERISA. In an effort to encourage annual reporting compliance, therefore, the Department implemented the Delinquent Filer Voluntary Compliance (DFVC) Program (the Program) on April 27, 1995 (60 FR 20873). Under the Program, administrators otherwise subject to the assessment of higher civil penalties are permitted to pay reduced civil penalties for voluntarily complying with the annual reporting requirements under Title I of ERISA.

This ICR covers the requirement of providing data necessary to identify the plan along with the penalty payment. This data is the means by which each penalty payment is associated with the appropriate plan. With respect to most pension plans and welfare plans, the requirement is satisfied by sending a photocopy of the delinquent Form 5500 annual report that has been filed, along with the penalty payment.

Under current regulations, apprenticeship and training plans may be exempted from the reporting and disclosure requirements of Part 1 of Title I, and certain pension plans maintained for highly compensated employees, commonly called “top hat” plans, may comply with these reporting and disclosure requirements by using an alternate

method by filing a one-time identifying statement with the Department. The DFVC Program provides that apprenticeship and training plans and top hat plans may, in lieu of filing any past due annual reports and paying otherwise applicable civil penalties, complete and file specific portions of a Form 5500, file the identifying statements that were required to be filed, and pay a one-time penalty. The ICR was approved by OMB under OMB Control Number 1210-0089 and is scheduled to expire on July 31, 2014.

II. Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the collections of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICRs for OMB approval of the extension of the information collection; they will also become a matter of public record.

Dated: November 15, 2013.

Joseph S. Piacentini,
Director, Office of Policy and Research,
Employee Benefits Security Administration.

[Billing Code: 4510-29-P]

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